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| 10/563,727             | 01/06/2006  | James Pearce         | 09170.0001U1        | 1955             |
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| Ballard Spahr LLP      |             |                      |                     |                  |
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| SAMS, MATTHEW C        |             |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/563,727

**Applicant(s)**

PEARCE ET AL.

**Examiner**

MATTHEW SAMS

**Art Unit**

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 3/12/2010 have been fully considered but they are not persuasive.
2. With respect to the "test data" and "query data" (Page 2), further explanation is provided below in the claim and below in section 3 to clear any confusion.
3. In response to the Applicant's argument that "Nicolas provides a single set of data to the mobile device only, with no separate set of data being provided to the user interface" (Page 3), the Examiner respectfully disagrees.

Nicolas teaches transmitting a "special programme" (Page 1 [0020]), which maps to the claimed "test data" and further "allows the readout of the sample survey questions" (Page 1 [0021]) on a mobile device, which means the "special programme" provides a "user interface". Nicolas discloses "survey questions" (Page 2 [0031]), which is mapped to the "query data" and are displayed to the user with the help of the "special programme". (Page 2 [0029]) Finally, Nicolas teaches receiving response data (Page 2 [0034] "answers") to the "survey questions" and storing them in a database. (Page 1 [0021] & Page 3 [0041])

Nicolas differs from the claimed invention by not explicitly stating the query data is directed to questions about the test data (*i.e.* the survey questions would be about how the special programme is displaying the survey questions).

However, in the same field of endeavor, LaMedica discloses the process of providing known data to a display in order to visually test/grade how the known data is

displayed by a mobile device. (Fig. 7 and Col. 12 lines 38 through Col. 13 line 24) Therefore, it would have been obvious to one of ordinary skill in the art to be motivated to implement the surveying method of Nicolas after modifying it to incorporate the ability to question the expected output of a wireless device of LaMedica since it enables remote testing of devices with feedback to a central authority. (LaMedica Col. 2 lines 27-42)

4. With respect to the Applicant's argument regarding the "specialized apparatus" to analyze the display, it is noted that the "specialized apparatus" is testing the wireless telephone "from the customer's perspective" *i.e.* what they would see with their eyes (Col. 12 lines 57-63). Therefore, the Examiner believes that a person could do the same test, however not as quickly as the "specialized apparatus".

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-6, 11-22 and 27-33 rejected under 35 U.S.C. 103(a) as being unpatentable over Nicolas (US-2004/0252816) in view of LaMedica, Jr. (US-7,024,161 hereinafter, LaMedica).

Regarding claim 1, Nicolas teaches a method for profiling characteristics of a mobile device, the method comprising:

transmitting test data to the mobile device over a mobile communications network for output by the mobile device; (Page 1 [0020-0022] the test data is mapped to the "software programme" and the "survey questions" is mapped to the query data because the software provides the structure/ability to display the question, with the questions being directed to "a question or a given subject" Page 1 [0002])

providing query data (Page 1 [0021] "survey questions") to a user interface (Page 1 [0021] "programme") defining queries for display by the user interface; (Page 1 [0021])

receiving response data from the user interface defining a response to the query; (Page 1 [0021] and Page 2 [0034]) and

storing the response data in a database. (Page 1 [0021], Page 3 [0041] and Pages 3-4 [0052])

Nicolas teaches that the "survey questions" can be directed to a "question or given subject", but differs from the claimed invention by not explicitly reciting that the queries concern the expected output of the test data by the mobile device.

In an analogous art, LaMedica teaches a modular wireless device testing set and method (Abstract) that includes capturing the output of a display of a wireless device and comparing the captured output with the expected output. (Col. 12 line 38 through Col. 13 line 24, specifically Col. 12 lines 38-46 and Fig. 7) At the time the invention was made, it would have been obvious to one of ordinary skill in the art to be motivated to implement the surveying method of Nicolas after modifying it to incorporate the ability to question the expected output of a wireless device of LaMedica since it enables remote testing of devices with feedback to a central authority. (LaMedica Col. 2 lines 27-42)

Regarding claim 2, Nicolas in view of LaMedica teaches wherein the test data is transmitted to the mobile device using a dedicated data communications link. (Nicolas Page 1 [0020] “when the telephone is activated and connected to the network” and “special programme to be downloaded beforehand”)

Regarding claim 3, Nicolas in view of LaMedica teaches wherein the test data is transmitted to the mobile device using a data messaging service. (Nicolas Page 2 [0031] “SMS”)

Regarding claim 4, Nicolas in view of LaMedica teaches the limitations of claim 1 above and that test data is transmitted to the mobile device and can be displayed on the user interface when an ideal time is determined. (Nicolas Page 1 [0014]) Nicolas in view of LaMedica differs from the claimed invention by not explicitly reciting wherein the test data is transmitted to the mobile device simultaneously to the query data being provided to the user interface. However, it is well within the scope of one of ordinary skill to recognize that the ideal moment for providing the query data to the user interface can be at the time of arrival of the test data since it enables an early warning to the survey institute as to whether a replacement for someone declining is warranted. (Nicolas Page 2 [0028] and Pages 2-3 [0038-0039])

Regarding claim 5, Nicolas in view of LaMedica teaches wherein respective queries concern respective items of test data. (Nicolas Page 2 [0032-0033])

Regarding claim 6, Nicolas in view of LaMedica teaches that questions are presented with the corresponding answers for the survey (Nicolas Page 2 [0029]) and

that the questions inherently have an order when more than one question is being asked. (Nicolas Page 2 [0034])

Regarding claim 11, Nicolas in view of LaMedica teaches wherein output of at least some items of test data comprises transmission of data over the mobile communications network. (Nicolas Page 2 [0031] "sample survey data (DS) which can be downloaded by different means, such as SMS")

Regarding claim 12, Nicolas in view of LaMedica teaches wherein the response data comprises affirmative or negative responses to respective queries. (Nicolas Page 1 [0021] "yes/no/do not know")

Regarding claim 13, Nicolas in view of LaMedica teaches wherein the response data comprises values for respective queries. (Nicolas Page 1 [0021] "digit between 1 and 5 for example")

Regarding claim 14, Nicolas in view of LaMedica teaches wherein the response data comprises only affirmative responses, negative responses and values. (Nicolas Page 1 [0021])

Regarding claim 15, Nicolas in view of LaMedica teaches a method of profiling the characteristics of plural mobile devices by carrying out the method of claim 1 for each of mobile device. (See citations above for claim 1 and Nicolas Page 1 [0009-0011] and Page 2 [0027])

Regarding claim 16, Nicolas in view of LaMedica teaches a computer programmed with computer software adapted to carry out the method of claim 1. (LaMedica Fig. 7, Nicolas Page 1 [0020-0022] and Fig. 1)

Regarding claim 17, Nicolas teaches an apparatus (Fig. 1 [IS]) for profiling characteristics of a mobile device, the apparatus comprising:

a network interface for transmitting test data to the mobile device over a mobile communications network for output by the mobile device; (Page 2 [0026])

a processor for providing query data to a user interface for display by the user interface (Page 2 [0026-0027]) and for receiving response data defining a response to the query from the user interface; (Page 1 [0021] and Page 2 [0034]) and

a database for storing the response data. (Page 1 [0021], Page 3 [0041] and Pages 3-4 [0052])

Nicolas teaches that the "survey questions" can be directed to a "question or given subject", but differs from the claimed invention by not explicitly reciting that the queries concern the expected output of the test data by the mobile device.

In an analogous art, LaMedica teaches a modular wireless device testing set and method (Abstract) that includes capturing the output of a display of a wireless device and comparing the captured output with the expected output. (Col. 12 line 38 through Col. 13 line 24, specifically Col. 12 lines 38-46 and Fig. 7) At the time the invention was made, it would have been obvious to one of ordinary skill in the art to be motivated to implement the surveying method of Nicolas after modifying it to incorporate the ability to question the expected output of a wireless device of LaMedica since it enables remote testing of devices with feedback to a central authority. (LaMedica Col. 2 lines 27-42)

Regarding claim 18, the limitations of claim 18 are rejected as being the same reasons set forth above in claim 2.



Regarding claim 19, the limitations of claim 19 are rejected as being the same reasons set forth above in claim 3.

Regarding claim 20, the limitations of claim 20 are rejected as being the same reasons set forth above in claim 4.

Regarding claim 21, the limitations of claim 21 are rejected as being the same reasons set forth above in claim 5.

Regarding claim 22, the limitations of claim 22 are rejected as being the same reasons set forth above in claim 6.

Regarding claim 27, the limitations of claim 27 are rejected as being the same reasons set forth above in claim 11.

Regarding claim 28, the limitations of claim 28 are rejected as being the same reasons set forth above in claim 12.

Regarding claim 29, the limitations of claim 29 are rejected as being the same reasons set forth above in claim 13.

Regarding claim 30, the limitations of claim 30 are rejected as being the same reasons set forth above in claim 14.

Regarding claim 31, the limitations of claim 31 are rejected as being the same reasons set forth above in claim 15.

Regarding claim 32, Nicolas in view of LaMedica teaches a computer server comprising the apparatus of claim 17. (Nicolas Fig. 1 [IS & OP] and LaMedica Fig. 7)

Regarding claim 33, Nicolas in view of LaMedica teaches a computer server for profiling the characteristics of a mobile device by providing a query page to a user

interface defining queries concerning the output of test data by a mobile device, at the same time as transmitting the test data to the mobile device over a mobile communications network. (Nicolas Page 3 [0046-0050] and LaMedica Fig. 7 and Col. 12 line 38 through Col. 13 line 44)

7. Claims 7-10 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicolas in view of LaMedica as applied to claims 1 and 17 above, and further in view of Nakamura (US-5,943,617).

Regarding claim 7, Nicolas in view of LaMedica teaches the limitations of claim 1 above, but differs from the claimed invention by not explicitly reciting the respective items of test data test individual attributes of the mobile device.

In an analogous art, Nakamura teaches a radio channel test system for a mobile telecommunications network that includes items of test data test individual attributes of the mobile device. (Col. 2 lines 26-41) At the time the invention was made, it would have been obvious to one of ordinary skill in the art to have been motivated to implement the mobile phone surveying method of Nicolas in view of LaMedica after modifying it to incorporate the ability to test individual attributes of a mobile device of Nakamura since the testing of a wireless network utilizes the same basic principles of conducting surveys (polling a wide variety of customers/devices within the network and receiving feedback); with only the subject/reason of the survey differing.

Regarding claim 8, Nicolas in view of LaMedica and Nakamura teaches at least some items of test data test characteristics of the display of the mobile device. (LaMedica Fig. 7, Col. 12 lines 38-46 and Nakamura Col. 4 lines 55-65)

Regarding claim 9, Nicolas in view of LaMedica and Nakamura teaches output of at least some items of test data comprises display of the test data. (LaMedica Fig. 7, Col. 12 lines 38-46 and Nakamura Col. 2 lines 42-53)

Regarding claim 10, Nicolas in view of LaMedica and Nakamura teaches at least some of the items of test data test communication characteristics of the mobile device. (LaMedica 12 line 57 through Col. 13 line 44 and Nakamura Col. 7 lines 8-13)

Regarding claims 23-26, the limitations of claims 23-26 are rejected as being the same reasons set forth above respectively in claims 7-10.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW SAMS whose telephone number is (571)272-8099. The examiner can normally be reached on M-F 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester Kincaid can be reached on (571) 272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 2617

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